

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE JEAN COUTU GROUP (PJC) INC.,

Plaintiff,

- against -

06 Civ. 14301 (JGK)

WELLS FARGO BANK, N.A., as Trustee,

MEMORANDUM OPINION
AND ORDER

Defendant,

AIM FUNDS MANAGEMENT INC. et al.,

Intervenor-
Defendants.

JOHN G. KOELTL, District Judge:

The Intervenor-Defendants move to intervene as defendants in this action as of right pursuant to Fed. R. Civ. P. 24(a), or in the alternative, as a matter within the Court's discretion pursuant to Rule 24(b). The Intervenor-Defendants own a majority of senior subordinated notes of the plaintiff The Jean Coutou Group (PJC) Inc. ("JC"). They contend that a proposed transaction by JC violates their rights under the Indenture and that the defendant, Wells Fargo Bank, N.A., the Trustee under the Indenture, may not adequately represent their rights.

Under Rule 24(a)(2), intervention as of right shall be permitted "when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition

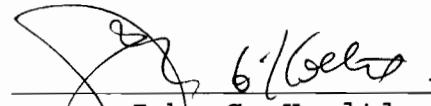
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of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." There is no dispute that the Intervenor-Defendants satisfy each of the requirements of Rule 24(a)(2), except the plaintiff contends that the Trustee will adequately represent the interests of the proposed Intervenor-Defendants. However, it is clear that the Trustee may not adequately represent the interests of the Intervenor-Defendants. At the hearing on the motion, counsel for the Trustee made it clear that it had sought information from the plaintiff and the Intervenor-Defendants as to their positions and that it had not yet determined whether to oppose the disputed transaction. Indeed, at the argument, the Trustee supported the application of the Intervenor-Defendants. Under the circumstances, the Intervenor-Defendants have shown that the representation of their interests may be inadequate and that the requirements of Rule 24(a) have been satisfied. See generally Trbovich v. United Mine Workers, 404 U.S. 528, 538-39 (1972); Aristocrat Leisure Ltd. v. Deutsche Bank Trust Co., 04 Civ. 10014, 2005 WL 751914, at *4 (S.D.N.Y. Mar. 31, 2005).

The motion by the Intervenor-Defendants to intervene as
of right as defendants pursuant to Rule 24(a)(2) is **granted**.

SO ORDERED.

Dated: New York, New York
January 12, 2007


John G. Koeltl
United States District Judge